

REGULATIONS

Pub. L. 110-289, div. A, title I, §1109(b), July 30, 2008, 122 Stat. 2675, provided that: “Not later than the expiration of the 180-day period beginning on the effective date of this Act [probably means date of enactment of Pub. L. 110-289, approved July 30, 2008], the Director [of the Federal Housing Finance Agency] shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4624(a)] (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section.”

SUBCHAPTER III—ENFORCEMENT PROVISIONS

§ 4631. Cease-and-desist proceedings**(a) Issuance for unsafe or unsound practices and violations****(1) Authority of Director**

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with subsection (e) or (f) of section 1456 of this title, or with paragraph (5) of section 1430(j) of this title.

(b) Issuance for unsatisfactory rating

If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).

(c) Procedure**(1) Notice of charges**

Each notice of charges under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such practice or violation should issue, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Issuance of order

If the Director finds on the record made at such hearing that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the regulated entity, executive officer, director, or entity-affiliated party an order requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(d) Affirmative action to correct conditions resulting from violations or activities

The authority under this section and section 4632 of this title to issue any order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such order is issued includes the authority to require a regulated entity or entity-affiliated party—

(1) make¹ restitution to, or provide reimbursement, indemnification, or guarantee against loss, if—

(A) such entity or party or finance facility was unjustly enriched in connection with such practice or violation; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;

(2) to require a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the regulated entity;

(4) to require the regulated entity to dispose of any loan or asset involved;

(5) to require the regulated entity to rescind agreements or contracts;

(6) to require the regulated entity to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the regulated entity to take such other action as the Director determines appropriate.

(e) Authority to limit activities

The authority to issue an order under this section or section 4632 of this title includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(f) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the regulated entity, finance facility,² executive officer, director, or entity-affiliated party concerned (except in the case of an order issued

¹ So in original. Probably should be “to make”.

² So in original.

upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subchapter.

(Pub. L. 102-550, title XIII, §1371, Oct. 28, 1992, 106 Stat. 3986; Pub. L. 110-289, div. A, title I, §1151, July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110-289, §1151(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to grounds for issuance against adequately capitalized enterprises and grounds for issuance against undercapitalized, significantly undercapitalized, and critically undercapitalized enterprises, respectively.

Subsec. (c)(1). Pub. L. 110-289, §1151(2)(A), (3)(C), substituted “practice” for “conduct” in two places and inserted “, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order” before period at end.

Subsec. (c)(2). Pub. L. 110-289, §1151(2)(B), (3)(A), (C), inserted “or entity-affiliated party” before “consents” and substituted “director, or entity-affiliated party” for “or director”, “the regulated entity” for “the enterprise” in two places, and “practice” for “conduct” wherever appearing.

Subsec. (d). Pub. L. 110-289, §1151(3)(B), (C), (4)(A), in introductory provisions, substituted “a regulated entity” for “an enterprise”, “director, or entity-affiliated party” for “or director”, and “practice” for “conduct”, and inserted “to require a regulated entity or entity-affiliated party” after “includes the authority”.

Subsec. (d)(1). Pub. L. 110-289, §1151(4)(B)(i), (ii), in introductory provisions, struck out “to require an executive officer or a director to” before “make restitution” and substituted “loss, if” for “loss to the enterprise to the extent that such person”.

Subsec. (d)(1)(A). Pub. L. 110-289, §1151(3)(C), (4)(B)(iii), inserted “such entity or party or finance facility” before “was unjustly” and substituted “practice” for “conduct”.

Subsec. (d)(1)(B). Pub. L. 110-289, §1151(4)(B)(iv), added subpar. (B) and struck out former subpar. (B) which read as follows: “engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 4636(b)(3) of this title;”.

Subsec. (d)(2). Pub. L. 110-289, §1151(3)(B), substituted “a regulated entity” for “an enterprise”.

Subsec. (d)(3). Pub. L. 110-289, §1151(3)(A), substituted “the regulated entity” for “the enterprise”.

Subsec. (d)(4). Pub. L. 110-289, §1151(3)(A), (4)(C), substituted “the regulated entity” for “the enterprise” and inserted “loan or” before “asset”.

Subsec. (d)(5) to (7). Pub. L. 110-289, §1151(3)(A), substituted “the regulated entity” for “the enterprise”.

Subsec. (e). Pub. L. 110-289, §1151(3)(A), (5), substituted “the regulated entity” for “the enterprise” in two places and inserted “or entity-affiliated party” before “or any executive” and before period at end.

Subsec. (f). Pub. L. 110-289, §1151(6), substituted “regulated entity, finance facility,” for “enterprise” and “director, or entity-affiliated party” for “or director”.

§ 4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 4631(a) of this title, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 4631 and 4633 of this title, the Director may—

(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) Additional requirements

An order issued under paragraph (1) may include any requirement authorized under subsection 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) of this section shall become effective upon service upon the regulated entity, executive officer, director, or entity-affiliated party and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d) of this section, shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore the books or records to a complete and accurate state.

(2) Effective period

Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and